

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
CENTRAL ISLIP DIVISION**

Telephone Science Corporation,

Plaintiff,

v.

Credit Management, LP,

Defendant.

Case No. 2:15-cv-4122

**COMPLAINT FOR DAMAGES  
UNDER THE TELEPHONE CONSUMER  
PROTECTION ACT AND OTHER  
EQUITABLE RELIEF**

**JURY DEMAND ENDORSED HEREIN**

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**PARTIES**

1. Plaintiff, Telephone Science Corporation (“Plaintiff” or “TSC”), is a Delaware corporation that maintained its principal place of business in Mount Sinai, New York.
2. Defendant, Credit Management, LP (“Defendant” or “Credit Management”), is a Nevada limited partnership that maintained its principal place of business in Carrollton, Texas, at all times relevant to this action.

**JURISDICTION AND VENUE**

3. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over this matter as it arises under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.
4. Pursuant to 28 U.S.C. § 1391(b), venue is proper because a substantial part of the events giving rise to this claim occurred in this judicial district.

## **BACKGROUND**

### *Telephone Science Corporation's Business*

5. TSC operates “Nomorobo,” a service designed to help consumers avoid incoming computerized telephone calls that the Federal Trade Commission (“FTC”) refers to as “robocalls.”
6. The FTC defines a “robocall” as one in which the caller uses a recorded or automated voice. *See* “Consumer Information: Robocalls,” <http://www.consumer.ftc.gov/articles/0259-robocalls>.
7. In 2013, Nomorobo was one of two winners of the FTC’s first Robocall Challenge, a public contest to design a system to stop unsolicited telemarketing calls before the calls can ring through to the subscriber of the called telephone number. *See* “FTC Announces Robocall Challenge Winners,” <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>.
8. The Nomorobo technology distinguishes between “blacklist” robocaller telephone numbers and “whitelist” numbers associated with acceptable incoming calls. *Id.*
9. As of the date on which this complaint is being filed, the Nomorobo service has helped consumers to avoid over 26 million unwanted robocalls.
10. In addition to providing the Nomorobo service to consumers, TSC maintains a “honeypot” group of telephone numbers, from which TSC is able to gather information related to inbound calls.
11. According to the FTC, a robocall “honeypot” is “an information system designed to attract robocallers, and help law enforcement authorities, researchers, and others gain enhanced insight into robocallers’ tactics.” *See* “FTC Announces Winners of ‘Zapping Rachel’

Robocall Contest,” <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest>.

12. In order for TSC’s robocall detection algorithm to accurately detect high frequency robocalling patterns, it compiles a large quantity of data related to calls placed to telephone numbers in the TSC “honeypot.”
13. The TSC “honeypot” is comprised of thousands of telephone numbers to which TSC subscribes.
14. ***Only Credit Management’s calls to telephone numbers in the TSC “honeypot” are at issue in this case.***

*Credit Management’s Business*

15. Credit Management’s primary business is the collection of past due debts.
16. In connection with Credit Management’s business, Credit Management places telephone calls using a “predictive dialer” and/or an artificial or prerecorded voice.
17. “[A] predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 13, ¶ 13; *In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd. 14014, 14091-4093 (2003); *see also In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 562-63 (2008).

**CREDIT MANAGEMENT'S CALLS TO TSC**

18. On or around March 14, 2014, Credit Management began calling telephone numbers to which TSC was the subscriber (the "TSC Numbers").
19. The TSC Numbers are identified in Exhibit A and are part of the TSC "honeypot."
20. TSC was the subscriber to each TSC Number Credit Management called at the time of the call.
21. TSC continues to subscribe to each TSC Number.
22. Prior to the time when Credit Management began calling the TSC Numbers, TSC had not provided express consent to Credit Management to call any TSC Number.
23. At no time after Credit Management began calling the TSC Numbers has TSC provided express consent to Credit Management to call any TSC Number.
24. Each TSC Number is assigned to a telephone service for which TSC is charged for the call.
25. As of the date on which this complaint is being filed, Credit Management placed approximately 7,178 telephone calls to the TSC Numbers using a predictive dialer and/or an artificial or prerecorded voice.
26. On June 12, 2015, TSC provided Credit Management with notice of this claim and identified the TSC telephone numbers that Credit Management had been calling up to that time.
27. Notwithstanding that notice, from June 16, 2015 through July 13, 2015, Credit Management continued to call at least thirty-five (35) of the TSC telephone numbers that TSC had identified for Credit Management as belonging to TSC.

APPLICABLE LAW

28. Senator Fritz Hollings, the original sponsor of the TCPA, stated:

Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.

137 Cong. Rec. 30,821 (1991).

29. The TCPA defines an automatic telephone dialing system (“ATDS”) as “equipment which has the capacity...(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1).

30. A predictive dialer is an ATDS within the meaning of the TCPA. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 13, ¶ 13; *In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd. 14014, 14091-4093 (2003); *see also In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 562-63 (2008).

31. Moreover, Credit Management’s predictive dialer has been held to be an ATDS within the meaning of the TCPA. *See Heather Brown v. Credit Mgmt., LP*, Case No. 14-cv-02274-TWT-AJB (N.D. Ga.) (Doc. No. 63).

32. The TCPA provides, in part:

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

\* \* \*

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or ***any service for which the called party is charged for the call...***

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

47 U.S.C. §§ 227(b)(1)(A)(iii) and 227(b)(1)(D) (emphasis added).

33. The term “called party,” as used in Section 227(b)(1)(A) of the TCPA, refers to the person or entity subscribing to the called number at the time the telephone call is made. *Zyboro v.*

*NCSPlus, Inc.*, 44 F. Supp. 3d 500, 504 (S.D.N.Y. 2014); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, pp 40-41, ¶ 73.

34. Any consent that may have been previously given as to a called telephone number lapses when that number is reassigned. *Sterling v. Mercantile Adjustment Bureau, LLC*, 2013 U.S. Dist. LEXIS 186432, \*6-7 (W.D.N.Y. Nov. 22, 2013).

35. A caller that places calls to a reassigned telephone number without the express consent of the called party is deemed to have “constructive knowledge” of the reassignment after one phone call has been placed to that reassigned number. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 40, ¶ 72.

36. TSC was the “called party” in each telephone call Credit Management placed to a TSC Number. *See Telephone Science Corp. v. Trading Advantage, LLC*, 2015 U.S. Dist. LEXIS 18591, \*3 (N.D. Ill. Feb. 17, 2015) (based on unambiguous language in TCPA, “TSC’s allegations fall within the statutory prohibition of § 227(b)(1)(A)(iii)”).

**COUNT ONE**

**Violation of the Telephone Consumer Protection Act**

37. Plaintiff re-alleges and incorporates by reference Paragraphs 5 through 36 above as if fully set forth herein.
38. Credit Management negligently violated 47 U.S.C. § 227(b)(1)(A) on multiple and separate occasions by using an ATDS and/or an artificial or prerecorded voice to call TSC at a telephone number assigned to a service for which TSC is charged for the call without TSC's prior express consent.

**COUNT TWO**

**Willful and Knowing Violation of the Telephone Consumer Protection Act**

39. Plaintiff re-alleges and incorporates by reference Paragraphs 5 through 36 above as if fully set forth herein.
40. The TCPA provides, in part:
- If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.
- 47 U.S.C. § 227(b)(3).
41. The Communications Act of 1943, of which the TCPA is a part, defines “willful” as “the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision[], rule or regulation....” 47 U.S.C. § 312(f).
42. In order to establish a “willful” or “knowing” violation of the TCPA, a plaintiff need not demonstrate that the defendant intended to violate the statute, or that it knew or should have known it was violating the statute. *See Roylance v. ALG Real Est. Servs., Inc.* 2015 U.S. Dist. LEXIS 44930, \*31 (N.D. Cal. Mar. 16, 2015); *Bridgeview Health Care Ctr. Ltd. v.*

*Clark*, 2013 U.S. Dist. LEXIS 37310, \*21-22 (N.D. Ill. Mar. 19, 2013); *Steward v. Regent Asset Mgmt. Solutions, Inc.*, 2011 U.S. Dist. LEXIS 50046, \*18-20 (N.D. Ga. 2011).

43. Instead, a plaintiff need only show that the defendant engaged in a “voluntary act” that violated the TCPA. *See Bridgeview*, 2013 U.S. Dist. LEXIS, at \*21-22; *see also Roylance*, 2015 U.S. Dist. LEXIS, at \*31 (intentionally making phone calls that violated TCPA, without intent to violate the statute, was sufficient to warrant treble damages).
44. Credit Management voluntarily placed telephone calls to the TSC Numbers using an ATDS and/or an artificial or prerecorded voice.
45. Moreover, Credit Management continued to call at least thirty-five (35) of the TSC telephone numbers that TSC had identified for Credit Management as belonging to TSC on June 12, 2015.
46. In addition, a company that places telephone calls using an ATDS and/or an artificial or prerecorded voice bears a responsibility to place intermittent live verification calls to ensure the subscriber being called has provided his or her express consent to be called. *See Sterling*, 2013 U.S. Dist. LEXIS 186432, at \*8; *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 1316, 1322 (S.D. Fla 2012).
47. Credit Management failed to adequately place intermittent live verification calls to the TSC Numbers to ensure that TSC had provided its express consent to Credit Management to call those telephone numbers.
48. Credit Management willfully and knowingly violated 47 U.S.C. § 227(b)(1)(A) on multiple and separate occasions by using an ATDS and/or an artificial or prerecorded voice to call TSC at a telephone number assigned to a service for which TSC is charged for the call without TSC’s prior express consent.



**JURY DEMAND**

49. Plaintiff demands a trial by jury.

**PRAYER FOR RELIEF**

50. Plaintiff prays for the following relief:

- a. An order enjoining Defendant from placing further telephone calls to the TSC Numbers pursuant to 47 U.S.C. § 227(b)(3).
- b. Judgment against Defendant for statutory damages pursuant to 47 U.S.C. § 227(b)(3) for each and every call Defendant made in violation of the TCPA.
- c. For such other legal and/or equitable relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

Hyslip & Taylor, LLC LPA

By: /s/ Christopher P. McDonnell  
One of Plaintiff's Attorneys

Date: July 14, 2015

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## Exhibit A to Complaint – TSC Numbers

1. (203) 297-6311	47. (231) 981-5049	93. (323) 306-2773
2. (205) 210-4637	48. (248) 233-2072	94. (323) 419-0283
3. (205) 409-7989	49. (248) 438-8059	95. (323) 736-5677
4. (205) 533-9488	50. (254) 771-0136	96. (323) 844-0653
5. (205) 588-1383	51. (256) 297-2318	97. (323) 844-0687
6. (206) 438-9162	52. (256) 297-2386	98. (323) 909-4424
7. (206) 971-6372	53. (256) 297-2466	99. (330) 423-6935
8. (206) 971-6934	54. (256) 297-2497	100. (334) 218-3513
9. (208) 240-6081	55. (256) 320-2358	101. (336) 506-6105
10. (208) 240-6132	56. (256) 344-0357	102. (336) 793-1469
11. (208) 297-2521	57. (256) 398-3193	103. (347) 756-4390
12. (208) 297-5827	58. (256) 399-0871	104. (360) 707-7378
13. (208) 350-6687	59. (256) 399-0875	105. (361) 226-1376
14. (208) 402-5870	60. (256) 399-4411	106. (361) 226-3124
15. (208) 413-6044	61. (256) 399-4655	107. (361) 226-4915
16. (208) 413-6061	62. (256) 399-4700	108. (361) 238-2049
17. (208) 413-6122	63. (256) 474-0638	109. (361) 238-4456
18. (208) 413-6515	64. (256) 727-5476	110. (361) 482-0113
19. (208) 417-0517	65. (256) 867-4485	111. (361) 482-0530
20. (208) 419-0596	66. (260) 301-5301	112. (361) 528-6169
21. (208) 629-0424	67. (260) 517-0196	113. (361) 551-0032
22. (208) 629-0481	68. (262) 476-0203	114. (361) 551-0313
23. (208) 639-2555	69. (262) 672-6601	115. (361) 633-6133
24. (208) 647-0606	70. (267) 296-8334	116. (404) 238-7037
25. (208) 881-0207	71. (269) 204-2872	117. (404) 996-1105
26. (208) 904-2926	72. (269) 216-6480	118. (405) 395-4424
27. (208) 904-3234	73. (269) 355-6170	119. (410) 286-1556
28. (208) 904-4846	74. (269) 558-4025	120. (410) 394-9226
29. (208) 908-6638	75. (270) 908-4721	121. (410) 695-3093
30. (208) 922-6193	76. (301) 358-9190	122. (410) 695-3637
31. (208) 957-5870	77. (301) 760-3287	123. (412) 265-4376
32. (209) 222-4612	78. (301) 850-1556	124. (417) 553-4316
33. (210) 390-1491	79. (302) 294-0170	125. (417) 553-4385
34. (213) 785-3421	80. (302) 526-4332	126. (417) 553-7223
35. (215) 789-4876	81. (302) 565-4000	127. (417) 553-7527
36. (217) 267-5094	82. (310) 692-7076	128. (417) 553-7537
37. (219) 246-2415	83. (310) 879-5527	129. (417) 622-0424
38. (224) 223-1114	84. (312) 445-0014	130. (432) 296-5587
39. (228) 202-5222	85. (313) 228-3506	131. (432) 296-6249
40. (228) 205-0551	86. (313) 279-0610	132. (432) 614-0355
41. (228) 205-2011	87. (313) 425-8211	133. (432) 934-0563
42. (228) 205-3499	88. (315) 235-1546	134. (440) 290-4069
43. (228) 205-3748	89. (318) 450-3474	135. (443) 577-4982
44. (228) 205-4653	90. (321) 250-2180	136. (443) 679-5346
45. (228) 215-0970	91. (321) 285-2510	137. (469) 530-3720
46. (228) 273-4454	92. (323) 306-2674	138. (478) 387-0445

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139. (501) 205-4929	185. (607) 533-6411	231. (724) 498-4768
140. (505) 206-5075	186. (608) 234-4458	232. (724) 576-4499
141. (505) 514-0449	187. (614) 759-6270	233. (724) 638-4312
142. (505) 796-4908	188. (615) 224-8367	234. (724) 784-8115
143. (505) 908-3786	189. (616) 244-2008	235. (724) 954-3109
144. (509) 295-8090	190. (616) 548-5387	236. (731) 325-5512
145. (512) 358-4185	191. (618) 219-8233	237. (731) 325-5894
146. (512) 382-9977	192. (618) 882-5417	238. (731) 334-5698
147. (512) 772-3346	193. (620) 412-2532	239. (731) 882-1745
148. (512) 772-4030	194. (620) 412-9468	240. (731) 882-4447
149. (512) 782-8667	195. (620) 412-9500	241. (732) 408-6356
150. (512) 928-3006	196. (620) 717-4464	242. (740) 314-4435
151. (513) 259-2088	197. (626) 325-0210	243. (740) 835-4620
152. (513) 392-4271	198. (626) 551-4286	244. (773) 280-5618
153. (517) 213-4036	199. (626) 689-4162	245. (775) 473-2007
154. (517) 213-4050	200. (626) 802-5851	246. (801) 528-3375
155. (517) 507-5881	201. (646) 374-2385	247. (802) 552-4554
156. (517) 554-5100	202. (662) 307-2297	248. (803) 349-4758
157. (517) 568-1077	203. (662) 570-1801	249. (803) 636-8612
158. (517) 568-1091	204. (662) 570-4325	250. (810) 356-5047
159. (517) 628-5422	205. (662) 570-4758	251. (810) 547-5015
160. (517) 858-0074	206. (662) 594-4064	252. (812) 291-5181
161. (517) 858-0117	207. (662) 618-6206	253. (812) 420-1857
162. (517) 879-1601	208. (662) 644-4295	254. (813) 375-0000
163. (517) 969-9122	209. (662) 649-6562	255. (814) 290-6044
164. (517) 969-9133	210. (662) 763-3420	256. (814) 313-1249
165. (561) 283-0161	211. (662) 763-3452	257. (814) 359-7041
166. (561) 283-1325	212. (662) 766-4022	258. (814) 791-1052
167. (573) 298-6411	213. (662) 766-4036	259. (815) 401-0831
168. (574) 217-0264	214. (678) 967-4664	260. (817) 803-4389
169. (574) 807-9306	215. (701) 540-4013	261. (818) 293-0746
170. (575) 208-0184	216. (703) 659-1710	262. (818) 824-6435
171. (575) 208-0517	217. (704) 288-0544	263. (818) 921-4506
172. (575) 208-0550	218. (704) 461-0210	264. (830) 214-1728
173. (575) 208-0661	219. (704) 994-8650	265. (843) 206-0617
174. (575) 208-0792	220. (706) 391-4482	266. (843) 420-1957
175. (575) 208-0942	221. (708) 459-8190	267. (843) 461-4752
176. (575) 208-2142	222. (708) 972-0216	268. (843) 485-0452
177. (580) 301-7174	223. (717) 387-7052	269. (850) 391-2849
178. (580) 303-4114	224. (717) 486-5998	270. (850) 851-0357
179. (580) 303-4946	225. (718) 354-8075	271. (859) 904-4378
180. (580) 303-7561	226. (718) 577-5153	272. (864) 214-2148
181. (580) 303-7831	227. (719) 387-7907	273. (864) 214-2337
182. (580) 832-0085	228. (724) 409-4234	274. (864) 214-2339
183. (580) 832-0873	229. (724) 472-4173	275. (864) 214-7903
184. (602) 910-2784	230. (724) 498-0116	276. (864) 214-7953

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277. (864) 438-3056	303. (913) 828-4345	329. (940) 228-1058
278. (870) 229-0263	304. (913) 828-4533	330. (954) 687-0306
279. (870) 229-0722	305. (918) 716-9239	331. (954) 687-0808
280. (870) 330-9461	306. (918) 919-0027	332. (972) 200-0660
281. (870) 330-9559	307. (918) 919-0613	333. (972) 388-3602
282. (870) 474-0390	308. (920) 319-8377	334. (972) 893-1533
283. (888) 603-3153	309. (928) 224-4314	335. (985) 227-4607
284. (888) 736-2494	310. (928) 237-1128	336. (989) 339-3031
285. (901) 457-5825	311. (928) 237-1771	337. (989) 424-5074
286. (903) 306-1705	312. (928) 237-4903	338. (989) 433-6266
287. (903) 328-6841	313. (928) 237-5590	339. (989) 488-2091
288. (903) 337-1431	314. (928) 239-4449	340. (989) 488-2145
289. (903) 337-1440	315. (928) 251-1983	341. (989) 488-2546
290. (903) 449-4268	316. (928) 277-1657	342. (989) 546-4817
291. (903) 482-4039	317. (928) 297-0584	343. (989) 546-4897
292. (903) 532-0271	318. (928) 358-4237	344. (989) 546-5010
293. (903) 771-0794	319. (928) 358-5577	345. (989) 546-5160
294. (903) 771-0842	320. (928) 457-0586	346. (989) 546-5358
295. (903) 771-4141	321. (928) 852-0426	347. (989) 607-2552
296. (904) 638-7128	322. (928) 852-7336	348. (989) 681-1688
297. (904) 674-3691	323. (931) 347-2426	349. (989) 741-9011
298. (906) 475-8354	324. (931) 347-4261	350. (989) 741-9201
299. (908) 617-0058	325. (931) 548-1274	351. (989) 853-2003
300. (908) 752-4282	326. (936) 465-9715	352. (989) 853-2035
301. (909) 295-7513	327. (937) 401-0235	353. (989) 863-4290
302. (910) 506-3113	328. (937) 595-0466	